

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1:10cr485 (LMB)
	)	
JEFFREY ALEXANDER STERLING	)	

**UNITED STATES' RESPONSE TO THE DEFENDANT'S MOTION FOR DISCOVERY**

The United States, through undersigned counsel, hereby responds to the defendant's motion for discovery.

1. On October 7, 2014, the defendant filed a motion for discovery, along with a supporting memorandum of points and authorities, concerning "any promises or understandings by and between the United States and James Risen." Dkt. 322, 323. At a status conference on October 10, 2014, the government addressed the motion briefly, stating that the government had made no promises to Mr. Risen in connection with his potential testimony in this matter. The government also advised the Court that it was in the process of complying with the revised regulations governing the issuance of subpoenas to members of the news media. 28 C.F.R. § 50.10.

2. On October 30, 2014, the defendant filed a supplemental memorandum in support of his initial motion for discovery, once again advancing the claim that the government has entered into an agreement with Mr. Risen concerning his testimony, and that the purported agreement implicates the government's discovery obligations. Dkt. 332.

3. The government is aware of its continuing discovery responsibilities, including its

obligation to disclose any promises it makes to prospective witnesses related to their testimony.

As the government noted at the October 10 status conference, there have been no promises made to Mr. Risen. That is still the case.

4. Pursuant to § 50.10(4)(iii)(A), which requires negotiations with the affected member of the news media prior to issuance of any subpoena, the government has communicated with counsel for Mr. Risen on three occasions. The most recent conversation was on October 16, 2014, in which counsel for Mr. Risen represented the following: (1) Mr. Risen would not appear voluntarily, that is, a subpoena would be necessary to secure his presence at trial or any pre-trial hearing; (2) if subpoenaed to testify, Mr. Risen would testify that he wrote the book *State of War* as well as the prior newspaper story concerning the defendant, and that both the book and the story accurately reflect information obtained by Mr. Risen from his source or sources; (3) Mr. Risen would not testify about any additional matters, including, for example, the timing of when he received the classified information at issue in Chapter 9, venue, or his use of journalistic conventions; and (4) counsel would accept service of a subpoena for Mr. Risen if the issuance of a subpoena is authorized.

5. The government has not reached an agreement with Mr. Risen as to the scope of his potential testimony. Counsel for Mr. Risen has simply informed the government of Mr. Risen's current position if he were subpoenaed in this case.

6. As the government suggested at the October 10 status conference, we propose a status hearing to resolve any issues related to the nature and scope of Mr. Risen's testimony, or, if a subpoena has not issued, the status of the subpoena determination process. Because the approval process remains ongoing, the government suggests that the hearing be set after the November 20 *Giglio* hearing. To that end, we will confer with counsel for the defendant and Mr.

Risen and suggest a date in early December, subject to the Court's availability.

Respectfully submitted,

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# CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2014, I caused an electronic copy of the foregoing to be filed and served via ECF on Edward B. MacMahon, Jr., and Barry J. Pollack, counsel for the defendant.

By /s/  
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